



22852

PATENT TRADEMARK OFFICE

PATENT

Attorney Docket No. 5725.0849

Application No. 09/809,007

Customer No. 22,852

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Jean-Marc ASCIONE et al.) Group Art Unit: 1713
Application No.: 09/809,007) Examiner: Harlan, Robert D.
Filed: March 16, 2001)
For: STABILIZING COMPOSITIONS)
COMPRISING AT LEAST TWO)
ANIONIC ASSOCIATIVE)
POLYMERS, THEIR USE FOR)
STABILIZATION OF NON-SOLID)
COMPOSITIONS, AND)
COMPOSITIONS COMPRISING)
AT LEAST ONE STABILIZING)
COMPOSITION)

10/kw
5/1/03

GROUP 1700

Assistant Commissioner for Patents
Washington, DC 20231

APR 30 2003

RECEIVED

Sir:

RESPONSE

In response to the Office Action dated January 29, 2003, Applicants respectfully request reconsideration of this application in view of the following remarks.

I. Status of the Claims

Claims 1-76 are pending in this application. Claims 19-54 and 73-76 have been withdrawn from consideration by the Examiner.

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

II. Rejection under § 112, second paragraph

Claims 14 and 67 have been rejected under § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regards as the invention. Specifically, the Examiner asserts that "Behen[e]th-25' is an unacceptable trademark." See page 3 of the present Office Action. Applicants disagree and respectfully traverse this rejection.

Beheneth-25 is defined as "the polyethylene glycol ether of behenyl alcohol." See International Cosmetic Ingredient Dictionary and Handbook, Seventh Edition, 1997, Vol. 1, p. 122 (enclosed herewith). Accordingly, "beheneth-25" is not a trademark. Applicants therefore request withdrawal of this rejection.

III. Rejection under § 102

Claims 1-18 and 55-75 have been rejected under 35 U.S.C. § 102(b) over Application of Acrylates/Methacrylates/Beheneth-25 Methacrylate Copolymer (Aculyn® 28) as a Thickener and Suspending Agent in Cosmetic Formulations and as a Polymeric Emulsifier ("522") for the reasons set forth on page 3 of the present Office Action. Applicants respectfully traverse this rejection.

A rejection under § 102 is only proper when the claimed subject matter, in this case a composition, is identically described or disclosed in the prior art. *In re Arkley*, 455 F.2d 586, 587 (CCPA 1972); see also M.P.E.P. § 706.02(a) ("For anticipation under 35 U.S.C. 102, the reference must teach every aspect of the

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HENDERSON
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1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

claimed invention either explicitly or impliedly."). In the present case, '522 fails to teach every aspect of the claimed invention either explicitly or impliedly.

Claim 1 is drawn to a composition comprising (i) at least one anionic associative polymer comprising at least one carboxylic acid group and at least one ester derived from a fatty alcohol and a carboxylic acid and (ii) at least one additional anionic associative polymer comprising at least one carboxylic acid group and at least one ester derived from an alkoxylated fatty alcohol and a carboxylic acid, wherein the fatty chain of said alkoxylated fatty alcohol comprises more than 18 carbon atoms. In contrast, '522 merely discloses Aculyn® 28 which is acrylates/methacrylates/beheneth-25 methacrylate copolymer. '522 fails to disclose a composition comprising Aculyn 28 and at least one anionic associative polymer comprising at least one carboxylic acid group and at least one ester derived from a fatty alcohol and a carboxylic acid. Accordingly, '522 fails to teach every aspect of the claimed invention either explicitly or impliedly.

For at least this reason, Applicants respectfully request withdrawal of this rejection.

IV. Conclusion

Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

**Attorney Docket No. 05725.0849
Application No. 09/809,007**

Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extension of time under 37 C.F.R. § 1.136 required to enter this response and charge those additional fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P

By: Anthony C. Tridico, Reg. No. 46,203
for Reg. No. 45,958

Dated: April 29, 2003

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FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

International Cosmetic Ingredient Dictionary and Handbook

**Seventh Edition
1997**

Editors

John A. Wenninger
G. N. McEwen, Jr., Ph.D., J.D.

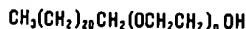
Volume 1

Published by

The Cosmetic, Toiletry, and Fragrance Association
1101 17th Street, N.W., Suite 300
Washington, DC 20036-4702

Beheneth-25**BEHENETH-25**

Definition: Beheneth-25 is the polyethylene glycol ether of Behenyl Alcohol (q.v.) that conforms generally to the formula:



where n has an average value of 25.

Chemical Class: Alkoxylated Alcohols

Function: Surfactant - Cleansing Agent

Technical Names:

PEG-25 Behenyl Ether

Polyethylene Glycol (25) Behenyl Ether

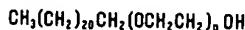
Polyoxyethylene (25) Behenyl Ether

Trade Name:

Mergital B 25 (Sidobre Sinnova)

BEHENETH-30

Definition: Beheneth-30 is the polyethylene glycol ether of Behenyl Alcohol (q.v.) that conforms to the formula:



where n has an average value of 30.

Information Sources: JSQI

Chemical Class: Alkoxylated Alcohols

Function: Surfactant - Cleansing Agent

Technical Names:

PEG-30 Behenyl Ether

Polyethylene Glycol (30) Behenyl Ether

Polyoxyethylene (30) Behenyl Ether

Trade Name:

Nikkol BB-30 (Nikko)

BEHENIC ACID

CAS No. EINECS No.
112-85-6 204-010-8

Empirical Formula:



Definition: Behenic Acid is the fatty acid that conforms generally to the formula:



Information Sources: CTFA D, JCLS, JSCL, MI-12(1051), TSCA

Chemical Class: Fatty Acids

Functions: Opacifying Agent; Surfactant - Cleansing Agent

Surfactant-cleansing agent has been included as a function for the soap form of Behenic Acid.

The inclusion of any compound in the *Dictionary and Handbook* does not indicate that use of that substance as a cosmetic ingredient complies with the laws and regulations governing such use in the United States or any other country.

Behentrimonium I

Trade Name Mixture:

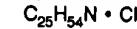
Akypoquat 40 (Chem-Y)

BEHENTRIMONIUM CHLOI

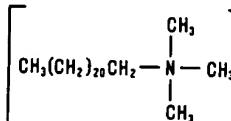
CAS No. EINECS No.

17301-53-0 241-327-0

Empirical Formula:



Definition: Behentrimonium Chlo is a quaternary ammonium salt that conforms generally to the formula:



Chemical Class: Quaternary Ammonium Compounds

Functions: Antistatic Agent; Hair Agent

Reported Product Categories: Hair Colors (All Types Requiring Caution Statements and Patch Tests); Hair Conditioners; Hair Preparations (I/Misc).

Technical Names:

1-Docosanaminium, N,N,N-Trimethylchloride
N,N,N-Trimethyl-1-Docosanaminium

Trade Names:

Genamin KDM (Hoechst Celanese & Surfactants)
Swanol CA-2580 (Nikko)
Varisoft BT85 (Witco)

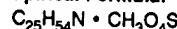
Trade Name Mixtures:

Hair-cure 2/011500 (Dragoco)
Incroquat Behenyl TMC (Croda Oleochemicals)
Incroquat Behenyl TMC-25 (Croda)
Incroquat Behenyl TMC/P (Croda Oleochemicals)

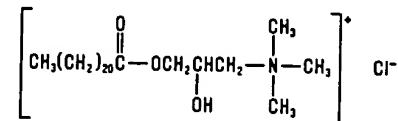
BEHENTRIMONIUM METHOS

CAS No. EINECS No.
81646-13-1 279-791-1

Empirical Formula:



Definition: Behentrimonium Methos is a quaternary ammonium salt that conforms generally to the formula:



Chemical Class: Quaternary Ammonium Compounds

Functions: Antistatic Agent; Hair Conditioning Agent

Technical Name:

(3-Behenyloxy-2-Hydroxypropyl)Trimethyl Ammonium Chloride

Trade Name:

Akypoquat 131 (Chem-Y)

